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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,982	07/31/2003	James Dunman	29953.184828	1857

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EXAMINER

PARKER, FREDERICK JOHN

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,982

Applicant(s)

DUNMAN, JAMES

Examiner

Frederick J. Parker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that articles be deleted and replaced by “containers” or “bottles”.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 5 is vague and indefinite because it is unclear if the second material merely “can” cure to form the barrier layer or must be cured to form the barrier layer in the method (a positive recitation in the step is suggested).
- Claim 12 is vague and indefinite because the claim fails to provide criteria for operation of the conveyor under which maintenance is carried out about every 7 days; that is maintenance would be more frequent if the conveyor operated 24 hours per day/ 7 days per week than if it operated only 8 hours per day/ 5 days per week, or maintenance would be required less often during plant shutdowns than when production is running at full capacity. Thus, the meaning of the limitation of claim 7 is unclear and imprecise.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-4,6,8-12,15,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carl et al US 3740259 in view of White US 4667620.

Carl teaches a method of coating threaded glass containers, in which the threaded closure portion of the container 12 is snugly fit into a threaded masking chuck 18 of body member 10 on support means 21, which in turn is part of a conveyor means 25. The threaded masking means is a "shield" to prevent coating of threaded portions of the container. The conveyor moves the containers to a coating area where they are coated by spray gun 22(without further limitation) or other coating means. See col. 3, 50 to col. 4, 26. Body member 10 may be fabricated from plastic materials such as HD PE, "Bakelite", etc without limitation as to forming method. Hence it is the Examiner's position that it would have been obvious to form such articles by known and conventional forming means, such as injection molding, because the process is conventionally

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used to form complex plastic polymer parts. The reference also teaches on col. 1, 47-51 that containers of plastic, ceramic, etc in addition to glass are conventionally coated by spraying or other means. However, the reference does not explicitly state the material making up the masking/ shielding means is the same as, and made from scrap of, the containers even though it is apparent from the reference that both containers and masking/ shielding means can be made of a polymeric plastic.

White also teaches the concept of coating certain portions of a container while shielding other portions from the coating material. Shielding means 114 are taught, without limitation of the material from which it is made. In col. 1, 13-22, it is specifically taught that the beverage industry is substituting polymeric plastics, and particularly the polyester polyethylene terephthalate (PET), for containers in place of glass or metal. It further teaches that containers must be recyclable due to state and federal mandates, and that PET material is recyclable (col. 1, 63-68; etc). The recycling of scrap material from a PET container-making operation would therefore have been an obvious variation given the teachings of White because there is simply no reason to expect that formed containers and scrap from making the same formed containers would have any difference in their ability to be recycled and reformed, absent a clear and convincing showing to the contrary. Hence it would have been obvious to substitute the glass container of Carl with an equivalent polymer plastic container to follow industry trends and comply with recycling regulations as taught by White. Carl is not limited to specific engineering polymer materials from which the masking body members are formed, and White teaches that formable/ recyclable engineering polymeric plastics such as PET are used to make threaded containers. It would have been obvious to one of ordinary skill in the art at the time the invention

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was made to carry out the process of Carl et al on plastic instead of glass container to follow the industry trends disclosed by White, and further using a polymeric masking body member of recycled scrap PET from the plastic container making process because White also discloses that PET can be recycled to be re-formed into articles. Further, the use of production scrap to make the polymeric masking body would have provided an opportunity to re-form container scrap into a useful product used in container production, resulting in apparent economic benefits.

As to claims 11-12, it would have been obvious to the skilled artisan to perform maintenance on the conveyor/ production line at an interval commensurate with the use of the production line to remove and dispose of broken or mal-functioning parts, including the masking/ shielding means.

7. Claims 5,7,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carl et al US 3740259 in view of White US 4667620 and further in view of the Admitted Prior Art (APA).

Carl et al and White are cited for the same reasons previously discussed, which are incorporated herein. Oxygen barrier coatings are not disclosed. However the APA discloses it is known to electrostatically apply oxygen barrier coats to plastic polymer/ PET containers, except at threaded portions, to prevent the adverse effects of oxygen migration through the walls of the containers. Since electrostatic coating encompasses electrostatic spraying, and Carl et al teaches to apply coatings to containers by "spraying", the use of electrostatic spraying would have been an obvious variation of the teachings of Carl et al. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of Carl et al in view of

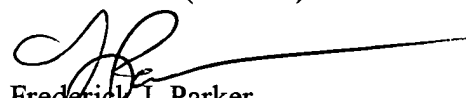
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White by electrostatically spraying oxygen barrier coatings to container surfaces to prevent the adverse effects of oxygen migration through the walls of the containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick J. Parker whose telephone number is 571/ 272-1426. The examiner can normally be reached on Mon-Thur. 6:15am -3:45pm, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on 571/272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Frederick J. Parker
Primary Examiner
Art Unit 1762

fjp